



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • www.aqmd.gov

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT SURFACE TRANSPORTATION LEGISLATIVE LANGUAGE (AS MODIFIED 5/19/09)

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I. Project and Program Incentives Based on Emission Reduction Benefits

***Summary:** The following language provides incentives by reducing or eliminating the state funding match requirements for road, rail or other infrastructure dedicated to low-or zero-emitting vehicles. In addition, it modifies the current Clean Fuels Grant Program to expand eligibility beyond small communities.*

Proposed Language: §120. Federal Share Payable

(a) Interstate System Projects.—

(1) In General.— Except as otherwise provided in this chapter, the Federal share payable on account of any project on the Interstate System (including a project to add

high occupancy vehicle lanes and a project to add auxiliary lanes but excluding a project to add any other lanes) shall be 90 percent of the total cost thereof, plus a percentage of the remaining 10 percent of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 percent of the total area of all lands therein, equal to the percentage that the area of such lands in such State is of its total area; except that such Federal share payable on any project in any State shall not exceed 95 percent of the total cost of such project.

(2) State-Determined Lower Federal Share.— In the case of any project subject to paragraph (1), a State may determine a lower Federal share than the Federal share determined under such paragraph.

(b) Other Projects. — Except as otherwise provided in this title, the Federal share payable on account of any project or activity carried out under this title (other than a project subject to subsection (a)) shall be—

(1) 80 percent of the cost thereof, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 percent of the total area of all lands therein, the Federal share, for purposes of this chapter, shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area; or

(2) 80 percent of the cost thereof, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share, for purposes of this chapter, shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is of its total area; except that the Federal share payable on any project in a State shall not exceed 95 percent of the total cost of any such project. In any case where a State elects to have the Federal share provided in paragraph (2) of this subsection, the State must enter into an agreement with the Secretary covering a period of not less than 1 year, requiring such State to use solely for purposes eligible for assistance under this title (other than paying its share of projects approved under this title) during the period covered by such agreement the difference between the State's share as provided in paragraph (2) and what its share would be if it elected to pay the share provided in paragraph (1) for all projects subject to such agreement. In the case of any project subject to this subsection, a State may determine a lower Federal share than the Federal share determined under the preceding sentences of this subsection.

(c) Increased Federal Share for Certain Safety Projects.— The Federal share payable on account of any project for traffic control signalization, traffic circles (also known as “roundabouts”), safety rest areas, pavement marking, commuter carpooling and vanpooling, rail-highway crossing closure, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier endtreatments, breakaway utility poles, or priority control systems

for emergency vehicles or transit vehicles at signalized intersections may amount to 100 percent of the cost of construction of such projects . . .

(d) Increased Federal Share for Certain Projects With Emission Reduction Benefits.--The Federal share payable on account of certain programs or projects that are beneficial to air quality by reducing emissions of criteria pollutants and their precursors, carbon dioxide and other greenhouse gases, and diesel particulate matter and other mobile source toxics, shall be increased by a specified percentage depending on the air quality benefits which the program or project achieves.

(1) The Federal share payable on account shall be increased to 100 percent for construction of road, rail or other infrastructure dedicated to zero-emission vehicles or locomotives, acquisition of zero-emission vehicles and locomotives, and installation or construction of charging stations for zero-emission vehicles and locomotives;

(2) The Federal share payable on account shall be increased to 90 percent for construction of road, rail or other infrastructure dedicated to alternative fuel vehicles or locomotives that are powered by fuels other than gasoline or diesel, acquisition of alternative fuel vehicles or locomotives, and installation or construction of fueling stations for alternative fuel vehicles or locomotives;

(3) For purposes of this section, zero-emission vehicles and locomotives shall mean vehicles and locomotives which emit no pollutants from the on-board source of power.

* * *

§ 5308. Clean Fuels Grant Program

(a) Definitions.— In this section, the following definitions apply:

(1) Clean Fuel Bus.— The term “clean fuel bus” means a passenger vehicle used to provide public transportation that—

(A) is powered by—

(i) compressed natural gas;

(ii) liquefied natural gas;

(iii) biodiesel fuels;

(iv) batteries;

(v) alcohol-based fuels;

- (vi) hybrid electric;
- (vii) fuel cell;
- (viii) clean diesel, to the extent allowed under this section; or
- (ix) other low or zero emissions technology; and

(B) the Administrator of the Environmental Protection Agency has certified sufficiently reduces harmful emissions.

(2) Eligible Project.— The term “eligible project”—

(A) means a project in a nonattainment or maintenance area described in paragraph (4)(A) for—

- (i) purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure;
- (ii) constructing or leasing clean fuel buses or electrical recharging facilities and related equipment for such buses; or
- (iii) constructing new or improving existing public transportation facilities to accommodate clean fuel buses; and

(B) at the discretion of the Secretary, may include a project located in a nonattainment or maintenance area described in paragraph (4)(A) relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

(3) Maintenance Area.— The term “maintenance area” has the meaning such term has under section 101 of title 23.

(4) Recipient.—

(A) In general.— The term “recipient” means a designated recipient (as defined in section 5307 (a)(2)) for an area that, and a recipient for an urbanized area ~~with a population of less than 200,000~~ that

- (i) is designated as a nonattainment area for ozone, PM_{2.5}, or carbon monoxide under section 107(d) of the Clean Air Act (42 U.S.C. 7407 (d)); or
- (ii) is a maintenance area for ozone, PM_{2.5}, or carbon monoxide.

(B) Smaller Urbanized Areas. — In the case of an urbanized area with a population of less than 200,000, the State in which the area is located shall act as the recipient for the area under this section.

(b) Authority. — The Secretary shall make grants in accordance with this section to recipients to finance eligible projects.

(c) Clean Diesel Buses. — Not more than 25 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section may be made available to fund clean diesel buses.

(d) Grant Requirements.—

(1) In General. — A grant under this section shall be subject to the requirements of section 5307.

(2) Government's Share of Costs For Certain Projects.— Section 5323 (i) applies to projects carried out under this section.

(e) Availability of Funds.— Any amount made available or appropriated under this section—

(1) shall remain available to a project for 2 years after the fiscal year for which the amount is made available or appropriated; and

(2) that remains unobligated at the end of the period described in paragraph (1) shall be added to the amount made available in the following fiscal year.

* * *

Sec. 5309. Capital Investment Grants

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(h) Government's Share of Net Project Cost.—

(1) In General.--Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost. A grant for the project shall be for 80 percent of the net capital project cost, unless the grant recipient requests a lower grant percentage.

(2) Adjustment for Completion Under Budget.--The Secretary may adjust the final net project cost of a new fixed guideway capital project evaluated under subsections (d) and (e) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

(3) Maximum Government Share.--The Secretary may provide a higher grant percentage than requested by the grant recipient if—

(A) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated at the time the project was approved for advancement into preliminary engineering; and

(B) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

(4) Remainder of Net Project Cost.--The remainder of net project costs shall be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(5) Limitation on Statutory Construction.--Nothing in this section, including paragraph (1) and subsections (d)(4)(B)(v) and (e)(5), shall be construed as authorizing the Secretary to require a non-Federal financial commitment for a project that is more than 20 percent of the net capital project cost.

(6) Special Rule for Rolling Stock Costs.--In addition to amounts allowed pursuant to paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts of the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

(7) Limitation on Applicability.--This subsection does not apply to projects for which the Secretary has entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2005.

(8) Special rule for zero-emission bus costs. Notwithstanding paragraph (1), a grant for a project consisting of the purchase of zero-emission buses shall be for 100 percent of the net capital project cost for areas classified under the Clean Air Act as severe or extreme ozone nonattainment areas.

II. Sustainable Regional Transportation Strategies Pilot Program

Summary: *This proposal creates a pilot program that provides funding for five metropolitan areas to implement a strategy that includes programs and projects that will achieve quantifiable emission reductions of criteria pollutants and precursors, mobile source air toxics, and greenhouse gases.*

Proposed language:

§ ____ . Sustainable Regional Transportation Strategies Pilot Grant Program.

(a) In General. -- The Secretary shall, on or before July 1, 2010, adopt rules establishing a Sustainable Regional Transportation Strategies Pilot Grant Program complying with this section.

(b) Purpose. -- The purpose of the program established under this section is to provide incentives and funding for development and implementation of coordinated emission control programs, transportation programs, and (in a manner determined necessary by state or local government) land-use policies, that will demonstrate effective means to reduce on-road congestion and concurrently achieve substantial and quantifiable reductions in emissions of criteria pollutants and precursors, mobile source air toxics (including diesel particulate matter), and greenhouse gases.

(c) Eligibility. -- The program shall apply to no more than five metropolitan statistical areas determined by the Secretary pursuant to this subsection. On or before December 31, 2010, any applicable metropolitan planning organization may apply to the Secretary to participate in the program. The Secretary shall, on or before April 15, 2011, designate areas as pilot program participants. The Secretary shall, based on all of the following criteria, make the determination of pilot program participants:

(1) potential of an area to successfully adopt and implement a Sustainable Regional Transportation Strategy which coordinates emission control programs, transportation programs, and (in a manner determined necessary by state or local government) land-use policies, that will demonstrate effective means to reduce on-road congestion and concurrently achieve substantial and quantifiable reductions in emissions of criteria pollutants and precursors, mobile source air toxics (including diesel particulate matter), and greenhouse gases.

(2) potential for broader national applicability of programs and projects likely to be included in an area's strategy, and

(3) the following limitations:

(A) at least one area shall be an ozone nonattainment area classified as severe or extreme under the Clean Air Act, with a population exceeding five million,

(B) at least one area shall be a substantially metropolitan nonattainment area with a population of less than one million,

(C) at least one area shall be a nonattainment area that includes major national and international freight transport routes, and

(D) no more than two areas may be located in the same state.

(d) Funding for Sustainable Transportation Strategies. -- The Secretary shall allocate funds in the amounts specified in subsection (d) for implementation of transportation programs or projects in any eligible metropolitan statistical area (determined pursuant to subsection (c)) which adopts a Sustainable Transportation Strategy complying with the requirements of

subsection (e), if such programs or projects are necessary to achieve the emissions reductions specified in paragraph (e)(8).

(e) Contents of Sustainable Transportation Strategies. In order to receive an allocation of funds pursuant to this section, a metropolitan statistical area must include, as part of the transportation plan developed pursuant to section 134 of this title and section 5303 of title 49, a Sustainable Transportation Strategy that —

(1) includes programs and projects that will achieve quantifiable reductions in emissions of criteria pollutants and precursors, mobile source air toxics (including diesel particulate matter), and greenhouse gases, through all of the following:

(A) reducing vehicle miles traveled by transporting passengers and freight by technologies other than on-road vehicles,

(B) facilitating transit use and reduction in vehicle miles traveled by incentivizing land uses (as determined by state or local government) compatible with utilization of transit and reduced need for on-road passenger and freight transport,

(C) requiring, funding, or establishing effective incentives for, use of transport technologies powered primarily by fuels other than gasoline or diesel fuels, including transport technologies that are hybrid electric, full electric, and powered by natural gas or other fuels with comparable emissions.

(2) prioritizes implementation of programs and projects based on amount of emission reductions and their cost-effectiveness in controlling emissions.

(3) prioritizes implementation of programs and projects that concurrently reduce on-road congestion and emissions,

(4) includes programs or projects that substantially reduce pollutant hot spots near transport facilities,

(5) includes provisions ensuring full, meaningful and early public participation in the process of developing and implementing Sustainable Transportation Strategies.

(6) includes programs to, within two years of completion of programs and projects, evaluate whether such programs and projects have achieved projected quantifiable emissions reductions, and disseminate such evaluations to the public, and

(7) achieve reductions in emissions from transportation sources that, in amount of emissions reduced, type of emissions reduced, and means of emission reduction, comply with the following:

(A) reduce emissions of criteria pollutants and their precursors, and emissions of diesel particulate matter and other mobile source air toxics, by amounts that are, at a minimum, commensurate with the long-term air quality needs of the area, as determined by the metropolitan planning organization and concurred in by the local or regional air quality agency with jurisdiction in the area for air quality planning under the Clean Air Act (or if no such agency exists, by the state agency with jurisdiction for air quality planning under the Clean Air Act), and

(B) reduce emissions of carbon dioxide and other greenhouse gases by amounts and means that provide criteria and toxic pollutant reduction co-benefits that are, at a minimum, commensurate with the long-term air quality needs of the area, as determined by the metropolitan planning organization and concurred in by the local or regional air quality agency with jurisdiction in the area for air quality planning under the Clean Air Act (or if no such agency exists, by the state agency with jurisdiction for air quality planning under the Clean Air Act).

(f) Funding Allocations for Sustainable Transportation Strategies.

(1) There is authorized to be appropriated out of the _____ Fund to carry out this section, \$10,000,000,000 for each of fiscal years 2010 through 2015.

(2) The Secretary shall allocate funds in each fiscal year for implementation of programs and projects specified in subsection (a).

(3) The Secretary shall distribute funds available in each fiscal year among areas qualifying for allocation under this section, up to the amount needed to implement the applicable Sustainable Transportation Strategy. The available allocations shall be distributed among metropolitan statistical areas based on area population.

(g) Report to Congress.-- On or before January 1, 2015, and every three years thereafter, the Secretary shall report to Congress regarding the effectiveness of the pilot program created pursuant to this section in achieving the program purposes specified in subsection (b).

III. Clean Construction Equipment

Summary: *The following language creates an incentive program that encourages the use of clean construction equipment by increasing the federal share by an additional 10 percent for equipment that meets the current EPA or state standards.*

Proposed Language:

Section __. Clean Construction Equipment.

(a) The Congress hereby finds and declares that it is in the national interest to promote utilization by the States of construction equipment that meet the most stringent emissions

standards for construction equipment adopted by the EPA or a state that are applicable to equipment manufactured in the year of project construction or earlier, for transportation projects using federal funds.

(b) The Secretary of Transportation is hereby authorized for each of the fiscal years through September 30, 2015, to increase the Federal share as provided in sections 119, 120, and 144 of title 23, United States Code, by ten percent of total project cost for any project submitted by a State which contains in the plans, specifications, and estimates submitted pursuant to section 106, of title 23, United States Code, the use of the construction equipment that meets the most stringent emissions standards for construction equipment adopted by the EPA or a state that are applicable to equipment manufactured in the year of project construction or earlier.

(c) The Secretary, in conjunction with the Administrator of the Environmental Protection Agency, shall establish a procedure within ninety days of the date of enactment of this Act for increasing the Federal share under this section and certifying that the equipment used for a project complies with this section.

IV. Clean Goods Movement Corridors Demonstration Project

Summary: This provision would establish funding for:

- *dedicated truck lanes restricted to low-emitting vehicles in severe or extreme ozone nonattainment areas,*
- *replacement of diesel trucks with trucks powered by low or zero-emission fuels in severe or extreme ozone nonattainment areas,*
- *on-dock rail capacity and electrification at ports with the high volume and the poor air quality to efficiently move cargo from ships to trains, and*
- *conversion to electrified rail along major national goods movement corridors.*

Proposed Language:

Section ____ . Clean Corridors for Goods Movement Demonstration Projects.

(a) In general. -- The Congress hereby finds and declares that it is in the national interest to encourage and promote the design and construction of clean corridors for goods movement, low emission highway infrastructure and low emission non-highway alternatives for the delivery of freight that will maximize efficiency, decrease the nation's reliance on foreign sources of fuel, reduce emissions of greenhouse gases and local air pollution, and improve public health. In the nation's most highly polluted regions, zero or near-zero emission technologies should be utilized for the movement of goods along major national goods movement corridors to reduce the emissions of air pollutants from heavy-duty truck traffic and locomotives, and accommodate growth in goods movement in an environmentally sustainable manner.

(b) Demonstration projects. -- The Secretary shall conduct demonstration projects to study the environmental benefits, increased efficiencies, and cost effectiveness of moving goods along clean corridors for goods movement by—

(1) creating infrastructure that transports freight using technologies which result in significantly lower emissions of greenhouse gases, criteria air pollutants, and toxic air contaminants (including diesel particulates) than technologies powered solely by gasoline or diesel fuels;

(2) replacing diesel trucks with trucks powered entirely or primarily by fuels other than diesel or gasoline, or by all-electric or hybrid-electric trucks;

(3) creating additional on-dock rail capacity to efficiently move international cargo directly between ships and trains without use of on-road trucks;

(4) converting existing rail along major national goods movement corridors to electrified rail or other electrified technology to move passengers and freight without contributing to increased emissions; and

(5) establishing other innovative clean corridors for goods movement demonstration projects consistent with the goals outlined in this section.

(c) Report.--Not later than June 30, 2017, the Secretary shall submit to Congress a report on the results of the demonstration projects, together with findings and recommendations on methods that will improve the transportation of freight.

(d) Funding.—

(1) Authorization of Appropriations.--There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), \$4,500,000,000 for each of fiscal years 2011 through 2014 as follows:

A) \$1,000,000,000 for the construction in severe or extreme ozone nonattainment areas of infrastructure that transports freight using technologies which result in significantly lower emissions of greenhouse gases, criteria air pollutants, and toxic air contaminants (including diesel particulates) than technologies powered solely by gasoline or diesel fuels,

(B) \$1,000,000,000 to establish subsidies and incentives in severe or extreme ozone nonattainment areas, to convert or replace diesel trucks with trucks that are powered entirely or primarily by fuels other than diesel or gasoline, or by all-electric or hybrid-electric trucks.

(C) \$1,000,000,000 for the construction of on-dock railyard capacity at the three highest volume container ports in the nation, and

(D) \$1,000,000,000 to establish subsidies and incentives for nonattainment areas along major national goods movement corridors for the conversion of existing rail

to electrified rail with priority consideration to be given to the conversion of rail infrastructure which serves both passenger and freight movement.

(E) \$500,000,000 to establish other innovative clean corridors for goods movement demonstration projects which are consistent with subsection (a).

(2) Contract Authority.--Funds authorized to be appropriated by this section shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of the demonstration projects shall be 100 percent, and such funds shall remain available until expended and shall not be transferable.

V. Promoting Conversion of Diesel Passenger Rail to Zero-Emission Technologies

Summary: *Many commuter and long-distance intercity passenger systems are using high polluting diesel locomotives. This provision would establish a program to provide funding for commuter rail systems to implement zero-emission rail.*

Proposed language:

Section ____ . Diesel Commuter Rail Conversion Pilot Grant Program.

(a) In General.--The Secretary shall establish and implement a pilot grant program to promote the conversion of diesel commuter rail to electric power.

(b) Applications.--A metropolitan planning organization, regional transportation agency, or governmental entity which operates a commuter rail system which primarily or entirely utilizes diesel locomotives may submit for approval by the Secretary an application, containing such information as the Secretary may require, for a grant under this section.

(c) Priority.--In selecting projects for grants, the Secretary shall give priority to projects that --

(1) are located in nonattainment areas for ozone or PM 2.5 (as defined in the Clean Air Act); and

(2) utilize rail infrastructure which serves both passenger and freight movement.

(d) Report.--Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the results of the pilot program carried out under this section.

(e) Funding.—

(1) In General.--There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$150,000,000 for each of fiscal years 2011 through 2016.

(2) Contract Authority.--Funds authorized by this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of a project under this section shall be determined in accordance with section 120 of such title.

(f) Use of Grant Funds.--Funds made available to a recipient of a grant under this section shall be used by the recipient for the project described in the application of the recipient approved by the Secretary.

VI. Early Interagency Consultation on All Projects

***Summary:** The TIP planning process requires that nonattainment areas, the MPO shall coordinate development of the TIP with development of the Transportation Control Measures in the SIP. This proposal would require coordination regarding all mobile source control measures, not just transportation control measures.*

***Proposed language:** §134(i)(3) of Title 23, United States Code, and §5303(i)(3) of Title 49, United States Code (currently identical) are amended as follows:*

(3) Coordination with Clean Air Act Agencies.— In metropolitan areas which are in nonattainment for ozone, PM_{2.5}, or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures and other mobile source control measures of the State implementation plan required by the Clean Air Act; the development of the transportation plan shall be conducted in consultation with State and local air quality agencies at the initiation of, and throughout, the planning process.

VII. CMAQ: Early Interagency Consultation on CMAQ Projects

***Summary:** The following language would require States and MPOs to consult with air quality agencies during the process of selecting projects for inclusion in the Transportation Improvement Program (TIP). It would also require that if an air agency provides comments concerning the estimated emission reductions, the State or MPO shall either modify the estimate of emission reductions or explain why such modification is not needed to ensure accuracy.*

***Proposed Language:** Subsection (g) of §149 of Title 23, United States Code, is amended as follows:*

(g) Interagency Consultation. — ~~The Secretary shall encourage~~ States and metropolitan planning organizations ~~to~~ shall consult with State and local air quality agencies in nonattainment and maintenance areas on the estimated emission reductions from proposed congestion

mitigation and air quality improvement programs and projects; the State or metropolitan planning organization shall respond to any written comments regarding the estimated emission reductions received from a state or local air quality agency by modifying the estimate of emission reductions or explaining in writing why such modification is not needed to ensure an accurate estimate.

VIII. CMAQ: Reallocation of Unspent CMAQ Funds

Summary: *The following language would ensure that unused CMAQ funds not spent within six years, or obligated within three years, they would be reallocated to states with the highest obligation rates.*

Proposed Language: *Subsection (b) of §104 of Title 23, United States Code is amended by adding the following at the end of paragraph (b)(2):*

(F) Full Obligation of CMAQ funds.– The amount of funds apportioned to each State under the congestion mitigation and air quality improvement program shall be obligated to the maximum amount of that State’s contract authority for projects eligible for funding under that program.

(i) Funds obligated but not spent by a State or a subdivision thereof may be re-obligated by the State to other projects eligible for funding under that program as long as the funds are ultimately spent within seventy-two months after receipt of the funds.

(ii) Funds obligated but not spent by a State or a subdivision thereof within seventy-two months of receipt shall be rescinded by the Secretary and reallocated on an annual basis only to those States with an average obligation rate of congestion mitigation and air quality improvement program funds over the previous three years which exceeds the national average, according to the aggregate population of the nonattainment areas in each state.

(iii) Funds not obligated by a State or a subdivision thereof within thirty-six months shall be rescinded by the Secretary and reallocated on an annual basis only to those States with an average obligation rate of congestion mitigation and air quality improvement program funds over the previous three years which exceeds 80%.

IX. CMAQ: Evaluation and Assessment of CMAQ Projects

Summary: *Eligibility standards for CMAQ funding are relatively vague. In addition, there is minimal follow-up to determine whether funded projects achieve projected benefits. The following language would address these issues by --*

- *requiring random assessments of the emissions benefits of CMAQ-funded projects after completion.*

- *requiring DOT to identify “best practices” for states and MPOs to use in projecting impacts prior to construction and to assess actual impacts post-completion.*

Subsection (h) of §149 of Title 23, United States Code, is amended as follows:

(h) Evaluation and Assessment of Projects. —

(1)(A) In General. — The Secretary, in consultation with the Administrator of the Environmental Protection Agency and State and local air quality agencies, shall, within two years of enactment of this section, evaluate and assess a representative sample of each category of programs or projects that received at least five percent of the total funded under the congestion mitigation and air quality program funds during the years 2001 through 2005 to—

(A)(i) determine the direct and indirect impact of the programs or projects on emissions, air quality and congestion levels; and

(B)(ii) ensure the effective implementation of the program.

(B) Program Categories.-- The Secretary shall define categories of programs and projects funded under the congestion mitigation and air quality program from 1996 through 2001. Such categories shall —

(i) be subcategorized according to site-specific variables that affect emissions, such as traffic volume and vehicle types,

(ii) where applicable and relevant to amount of emissions from the project, shall be based on type of transportation technology or emission control technology utilized, and

(iii) may include, but shall not be limited to, the categories of transportation control measures reported on by the Administrator in consultation with the Secretary pursuant to Section 108(f)(1)(A) of the Clean Air Act.

(C) Analysis of Projected Emissions and Congestion Impacts.-- The effect on emissions and congestion of each program and project analyzed pursuant to subparagraph (A) shall be compared with the projections developed prior to commencement of each such program or project to evaluate the accuracy of methodologies used to project congestion and emissions, and to understand variables that may have contributed to actual congestion and emissions differing from those projections.

(D) Best Practices. – Utilizing the data collected from assessments conducted pursuant to this subsection and any additional relevant and credible data, the Secretary, in consultation with the Administrator, shall identify best practices for metropolitan planning agencies to use to accurately—

(i) project, prior to program or project commencement, the amount of emission reductions resulting from the program or project; and

(ii) determine, after program or project completion, the amount of actual emission reductions resulting from the program or project.

(2) Post-Completion Assessment. – Each year, every State receiving funds under the congestion mitigation and air quality program shall perform post-completion assessments of a representative sample of programs and projects among all categories of projects completed in that state during the previous twenty-four months. Such assessments shall –

(A) be conducted by the agency primarily responsible for implementing the program or project, or another agency pursuant to agreement with the implementing agency, in consultation with the air quality agency with jurisdiction for air quality planning in the area,

(B) assess the actual congestion and emission impacts of each completed project,

(C) include an evaluation of the accuracy of projections of congestion and emissions impacts that were made prior to funding of the program or project,

(D) utilize the best practices identified pursuant to subparagraph (1)(D), and

(E) be provided to the Secretary no later than six months after commencement of the assessment, along with any comments of the air quality agency.

(3) Database.— Using appropriate assessments of projects funded under the congestion mitigation and air quality program conducted pursuant to this subsection, and any results from other research, the Secretary shall—

(A) maintain and disseminate a cumulative database describing the impacts of the projects;

(B) prepare and disseminate every five years a report containing information regarding eligible projects, the effectiveness of the congestion mitigation and air quality program in reducing emissions, and the types of projects that have been most effective in reducing emissions;

(C) refine and update methodologies and best practices for establishing projections prior to program commencement; and

(D) continue to make improvements to the congestion mitigation and air quality program to maximize emission reductions.

(4) Definition. - For purposes of this section, “emissions” shall mean—

(A) criteria pollutants and their precursors,

(B) carbon dioxide and other greenhouse gases, and

(C) diesel particulate matter and other mobile source toxics, and the level of human exposure to mobile source toxics within 1,000 feet of the project boundaries.

X. Removing SAFETEA-LU Urbanized Area Density Formula

Summary: Section 5340 of Title 49 created a density formula for the distribution of mass transit funds for urban areas which greatly benefits small states over larger states, resulting in the loss of over \$40 million to California annually.

Proposed language:

~~Section 5340. Apportionments based on growing States and high density States formula factors~~

~~—(a) **Definition.**— In this section, the term “State” shall mean each of the 50 States of the United States.~~

~~—(b) **Allocation.**— Of the amounts made available for each fiscal year under section 5338 (b)(2)(M), the Secretary shall apportion—~~

~~—(1) 50 percent to States and urbanized areas in accordance with subsection (c); and~~

~~—(2) 50 percent to States and urbanized areas in accordance with subsection (d).~~

~~—(c) **Growing State Apportionments.**—~~

~~—(1) **Apportionment among states.**— The amounts apportioned under subsection (b)(1) shall provide each State with an amount equal to the total amount apportioned multiplied by a ratio equal to the population of that State forecast for the year that is 15 years after the most recent decennial census, divided by the total population of all States forecast for the year that is 15 years after the most recent decennial census. Such forecast shall be based on the population trend for each State between the most recent decennial census and the most recent estimate of population made by the Secretary of Commerce.~~

~~—(2) **Apportionments between urbanized areas and other than urbanized areas in each state.**—~~

~~—(A) **In general.**— The Secretary shall apportion amounts to each State under paragraph (1) so that urbanized areas in that State receive an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.~~

~~—(B) **Remaining amounts.**— Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.~~

- ~~—(3) **Apportionments among urbanized areas in each state.**—The Secretary shall apportion amounts made available to urbanized areas in each State under paragraph (2)(A) so that each urbanized area receives an amount equal to the amount apportioned under paragraph (2)(A) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.~~
- ~~—(d) **High Density State Apportionments.**—Amounts to be apportioned under subsection (b)(2) shall be apportioned as follows:~~
- ~~—(1) **Eligible states.**—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.~~
- ~~—(2) **State urbanized land factor.**—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to—~~
- ~~—(A) the total land area of the State (in square miles); multiplied by~~
- ~~—(B) 370; multiplied by~~
- ~~—(C)~~
- ~~—(i) the population of the State in urbanized areas; divided by~~
- ~~—(ii) the total population of the State.~~
- ~~—(3) **State apportionment factor.**—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to the difference between the total population of the State less the amount calculated in paragraph (2).~~
- ~~—(4) **State apportionment.**—Each State qualifying for an apportionment under paragraph (1) shall receive an amount equal to the amount to be apportioned under this subsection multiplied by the amount calculated for the State under paragraph (3) divided by the sum of the amounts calculated under paragraph (3) for all States qualifying for an apportionment under paragraph (1).~~
- ~~—(5) **Apportionments among urbanized areas in each state.**—The Secretary shall apportion amounts made available to each State under paragraph (4) so that each urbanized area receives an amount equal to the amount apportioned under paragraph (4) multiplied by a ratio equal to the population of each urbanized area divided by the sum of populations of all urbanized areas in the State. Amounts apportioned to each urbanized area shall be added to amounts apportioned to that urbanized area under section 5336, and made available for grants under section 5307.~~

XI. CMAQ: Additional Eligibility for CMAQ Projects

***Summary:** Eligibility standards for CMAQ funding are relatively vague. The following language would address these issues by requiring more effective funding eligibility criteria in nonattainment areas that establishes that projects must achieve sustainable and quantifiable air benefits.*

Subsection (j) of §149 of Title 23, United States Code, is inserted to read as follows:

(j) Additional Criteria for Eligibility of Programs and Projects in Nonattainment Areas. –

(1) In addition to the requirements for eligibility under subsection (b), the Secretary shall promulgate rules specifying additional criteria for programs and projects in nonattainment areas to be eligible for funding under the congestion mitigation and air quality program. Such rules shall be promulgated on or before December 31, 2014 and shall be reviewed and updated at least every three years thereafter in consideration of the most recent available data. The criteria shall be based on the data collected from assessments conducted pursuant to subsection (i) and any other relevant and credible data, and shall be developed in consultation with the Administrator, metropolitan planning agencies, and state and local air quality agencies (including agencies with jurisdiction over ozone nonattainment areas classified under the Clean Air Act as severe or extreme). Such Criteria shall —

(A) require each funded program or project located in a nonattainment area to achieve the emission reductions required by this section in a manner that is projected to be quantifiable and sustained for the life of the program or project,

(B) specify that, in ozone nonattainment areas classified as severe or extreme, that the funds recipient shall determine, with concurrence of the local or regional air quality agency with jurisdiction in the area for air quality planning under the Clean Air Act (or if no such agency exists, by the state agency with jurisdiction for air quality planning under the Clean Air Act), that the projects and programs to be funded pursuant to this section will, in aggregate, result in emission reductions that are commensurate with the long-term air quality needs of the area.

(C) provide priority for projects or programs that both--

(i) reduce passenger or freight vehicle miles traveled, and

(ii) move passengers or freight using technologies that result in significantly lower emissions of greenhouse gases, criteria air pollutants, and hazardous air pollutants (including diesel particulates and other mobile toxics) than technologies powered solely by gasoline or diesel fuels.

(2) If the Secretary determines, based on the assessment and comments submitted pursuant to paragraph (A) of section (h), that actual emission reductions do not equal or exceed the emission reductions projected prior to program or project funding, the Secretary shall use the assessment and any comments submitted by the applicable air quality agency to revise project eligibility criteria established by the Secretary under this section.

XII. Clean Locomotives

Summary: *This provision would require that in severe ozone nonattainment areas all freight rail locomotives must be zero-emission or Tier 4 compliant by 2020. EPA has already required all new locomotives comply with Tier 4 standards by 2015. But this would apply that rule to existing locomotives as well.*

Proposed language:

Section ____ . Clean Locomotives .

By 2020, all freight rail locomotives in use in Severe 17 or Extreme ozone nonattainment areas shall be zero-emission locomotives or have engines which comply with Tier 4 emissions standards as adopted by the Environmental Protection Agency.